

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD MENDY, et al.,

Plaintiffs,

v.

BOXREC, et al.,

Defendants.

CIVIL ACTION NO. 1:22-CV-00535

(MEHALCHICK, J.)

**ORDER**

Presently before the Court is the report of Judge Carlson, ([Doc. 63](#)), recommending the Court dismiss for failure to prosecute. ([Doc. 63](#)). Neither party filed objections to the report, and the time within which they could do so has passed.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). In any event, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Local Rule 72.31.

Since the report correctly states the procedural and factual background of this case, it will not be repeated herein. ([Doc. 63](#), at 1-4). In sum, Plaintiffs initiated this action *pro se* in 2022. ([Doc. 1](#)). On September 11, 2023, the Court dismissed Plaintiffs’ complaint, but granted Plaintiffs leave to amend. ([Doc. 53](#)). On October 2, 2023, Plaintiffs filed an amended complaint. ([Doc. 56](#)). On October 9, 2023, ABC Defendant filed a motion to strike Plaintiffs’

amended complaint or in the alternative, moved for a more definitive statement pursuant to Fed. R. Civ. P. 12(e). (Doc. 58). On October 16, 2023, Boxrec Defendants filed a motion to strike and/or dismiss Plaintiffs' amended complaint. (Doc. 59). Plaintiffs failed to respond to the motions despite an order from Judge Carlson, dated February 7, 2024, directing them to do so. (Doc. 62).

Judge Carlson conducted an extensive analysis to determine whether the case should be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute or comply with court orders. The report marches through the well-known factors under *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984), which guide courts in the Third Circuit when analyzing a failure to prosecute. Judge Carlson found all of the six *Poulis* factors weigh in favor of dismissal. (Doc. 63, at 12). Notably, Judge Carlson found Plaintiffs appear to have willfully failed to prosecute their claims and follow court orders and that many of their claims fail on their merits. (Doc. 63, at 12).

Upon review, the Court agrees with the sound reasoning that led Judge Carlson to his conclusion in his report and discerns no error of law. Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The report and recommendation of Judge Carlson (Doc. 63) is **ADOPTED IN ITS ENTIRETY AS THE OPINION OF THE COURT.**
2. This case is **DISMISSED** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.
3. ABC Defendant's motion to strike (Doc. 58) and Boxrec Defendants' motion to strike (Doc. 59) Plaintiffs' amended document re **DENIED** as moot.
4. The Clerk of Court is directed to **CLOSE** this case.

**Dated: April 4, 2024**

*s/ Karoline Mehalchick*  
**KAROLINE MEHALCHICK**  
 United States District Judge